

LABOUR DEPARTMENT

The 22nd October, 1984

No. 9/5/84-Lab. /7136.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and management of M/s Frick India Ltd., Mathura Road, Faridabad.

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 348 of 1983

between

SHRI JAGMOHAN SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. FRICK INDIA LTD., MATHURA ROAD, FARIDABAD.

Present :—

Shri Manohar Lal, for the workman.

Shri S.L. Gupta, for the management.

AWARD

This reference has been referred to this court by the Governor of Haryana,—*vide* his order No. ID/FD/131-83/55345-50, dated 11th October, 1983, under section 10(i) (c) of the Industrial Disputes Act, 1947, for adjudication of the industrial dispute existing between Shri Jagmohan Singh, workman and the respondent management of M/s. Frick India Ltd., Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Jagmohan Singh was justified and in order ? If not to what relief is he entitled ?

The workman was appointed in January, 1976. He has proceeded on leave from 25th April, 1983 to 4th May, 1983, but he fell ill. Hence on 7th June, 1983, he sent his medical certificate. On 24th May, 1983, he returned with fitness certificate and went to the factory but he was not allowed to join duty. Hence he has filed his demand notice.

In the written statement the management has admitted the fact of appointment and leave. It is denied that any medical certificate was received as alleged. On 9th May, 1983 a recall notice was issued to the workman to join duty within 10 days but the workman failed to report. Hence his services were terminated having been abandoned his service by registered letter dated 16th May, 1983. This action was taken under section 19 of the Certified Standing Orders of the Company.

The parties contested the reference on the following issues :—

- (1) As per reference ?
- (2) Whether the workman is gainfully employed ?

I have gone through the evidence of both the parties and my findings on the issues are as under :—

Issue No. 1:

It is admitted that the workman was on sanctioned leave up to 4th May, 1983. The medical certificate was received by the management of 7th June, 1983. The registered cover is Ex. M-11. The workman never applied for leave from 5th May, 1983 to 16th May, 1983. Recall notice was issued to him on 9th May, 1983, but it was received un-served and it is Ex. M-3. Termination order was also sent to him by registered cover. It is clear that the workman remained absent from 5th May, 1983 to 16th May, 1983 up to the date of termination. It was for more than 10 days. The workman never applied for leave. He applied for leave on 24th May, 1983, when he was already considered to have left the services under section 19 of the Certified Standing Order of the factory. The certified Standing orders of the factory has force of a statute. It has been held by the Hon'ble High Court in Free wheels India Ltd., Vs. State of Haryana; FJR Vol. 1.64 page 340 that certified standing orders have statutory force under the Industrial Employment Act, 1946, which are such standing orders provide that a workman who absent himself from duty without leave for eight consecutive days or more will be deemed to have left service of the employer without notice thereby terminating his employment automatically etc. etc., a workman who remained absent without leave for eight consecutive days must be deemed to have left service of the employer and his employment is automatically terminated."

In the present case the workman never applied for leave. He came to join duty along with fitness certificate which has no meaning and hence it was not explanation for absence. His termination is, therefore, deemed as if he has left the services of the management.

Issue No. 2:

There is no evidence that the workman is gain fully employed any where. Hence this issue is decided against the management.

In view of the above-said findings, I give the award that the termination of the services of the workman is justified and in order and he is not entitled to any relief.

Dated 13th September, 1984.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endst. No. 2217, dated 28th September, 1984.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under section 15 of the I.D. Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

The 5th November, 1984

No. 9/5/84-6Lab./7141.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Sonapat Engineering, Works Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 36 and 20 of 1980

between

SHRI JAGDISH PARSHAD AND KARAN SINGH, WORKMEN AND THE MANAGEMENT OF M/S SONEPAT ENGINEERING WORKS, SONEPAT.

Present :—

Shri R.S. Lakra A.R. for the workmen.
Shri D. C. Gandhi, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of the section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Jagdish Parshad and Shri Karan Singh, and the management of M/s Sonapat Engineering Works, Sonapat, to this Court, for adjudication,—*vide* Labour Department Notification No. ID/SPT/153-79/9761, dated 25th February, 1980 and ID/SPT/150-79/3647, dated 21st January, 1980 :—

Whether the termination of services of Shri Jagdish Parshad and Karan Singh was justified and in order ? If not, to what relief are they entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. Parties appeared. These two references were ordered to be consolidated by my learned predecessor Shri I.S. Dhull,—*vide* his order dated 20th April, 1983.

3. The workman Shri Jagdish Parshad alleged that he was in the employment of the respondent since 21st February, 1977, as a helper on monthly wages of Rs. 250 and his services were terminated on 22nd June, 1979. Similarly Shri Karan Singh workman, alleged that he was employed with the respondent as a helper since the year 1975 and that his services were terminated unlawfully on 11th June, 1979, without passing any written order. Both the workmen alleged that their termination was made in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

4. In both these cases, the respondent filed separate reply controverting the claim of the petitioners.

5. On the pleadings of the parties, the following issue was settled for decision on 9th December, 1980:—

(1) Whether the termination of service of Shri Jagdish Parshad and Shri Karan Singh was justified and in order? If not, to what relief are they entitled?

6. Subsequently the respondent absented and so *ex parte* proceedings order was passed against him on 22nd September, 1981 and the same was set aside on 6th November, 1981. Again the respondent absented and *ex parte* proceedings order was passed against him on 16th November, 1981. The respondent filed an application for setting aside *ex parte* proceedings order, which was rejected on 3rd December, 1981 and resultant-ly Shri B.L. Dalal, my learned predecessor, rendered an *ex parte* award against the respondent on 29th December, 1981. In spite of the fact that these two references were ordered to be consolidated, he chose to render separate award in both these cases.

7. Again on an application filed by the respondent, the *ex parte* award was set aside on 29th September, 1982. This is how this case is before me for disposal.

8. The parties adduced some evidence on merits but happily a settlement has been arrived at between the parties, whereunder, the respondent/management agreed to reinstate both the workmen w.e.f. 7th September, 1984, with continuity of service. On the other hand both the workmen had agreed to accept a sum of Rs. 5,000 each in lieu of the entire back wages. They further agreed to receive this amount in three instalments first and second of Rs. 2,000 each and the last one of Rs. 1,000 payable on 31st October, 1984, 31st December, 1984 and 31st January, 1985 respectively. In case, the management failed to pay these instalments to the workmen by the stipulated date, the workmen are awarded wages for the entire back period. The workmen shall not leave the employment of the respondent till 31st January, 1985 in terms of the settlement. In case they leave the employment of the management before 31st January, 1985, they shall forfeit their right to receive the instalments falling due thereafter. In terms of the settlement, no-dispute award is given. The reference is answered and returned accordingly. There is no order as to cost. A copy of this award be placed upon the file of reference No. 20 of 1980.

Dated 3rd September, 1984.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endst. No. 3277, dated 1st October, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

No. 9/5/84-6Lab. /7643.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Baronz Powder Pvt. Ltd., 13/3, Mathura Road, Faridabad.

IN THE COURT OF SHRI R.N. SINGAL PRESIDING OFFICER, LABOUR COURT FARIDABAD

Between

SHRI RAJA DEEN, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. BARONZE POWDER
PVT. LTD., 13/3, MATHURA ROAD, FARIDABAD

Present :—

Shri M.K. Bhandari, for the workman.

Shri B. K. Akhori, for the respondent management.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/10-83/6202-07, dated 18th February, 1983, under Section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication of the industrial dispute existing between Shri Raja Deen, workman and the respondent management of M/s. Baranze Powder Pvt. Ltd., 13/3, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of service of Shri Raja Deen was justified and in order If not, to what relief is he entitled ?

According to the demand notice the claimant was appointed in the year 1977 as helper. On 15th October, 1982 the respondent suddenly closed the factory without informing the Labour Officer. Hence this dispute falls under section 2-A of the Industrial Disputes Act. The claimant had complained with the Labour Officer but the management did not appear. Hence this demand notice was served.

The respondent has admitted that the workman was appointed as alleged. It is further alleged that the unit was closed after giving full and final settlement to its employees. But the workman did not accept the payment. The matter was referred to the Labour Officer and the respondent had deposited Rs. 1,200 in full and final settlement of his claim.

In his rejoinder the claimant has denied the averments of the respondent. The parties contested the reference on the following issues :—

- (1) Whether this court has no jurisdiction ?
- (2) Whether no relief can be granted for the period of closure ?
- (3) Whether the workman is gainfully employed after his alleged termination ? (OPMO)
- (4) As per reference ?

I have heard the arguments of both the parties and gone through the evidence on record produced by the parties. My findings on the issues are as under :—

Issue No. 1 :

This issue was neither pressed nor argued. Hence this issue is decided against the respondent management.

Issue No. 2 :

It is alleged that the factory was closed. It has been so admitted by the workman in the demand notice. The claimant has admitted so in the statement as WW1 in the court that the factory has not started as yet since its closure. Hence the workman is not entitled to any relief. In view of the law laid down in *Avon Services Vs. Industrial Tribunal, Haryana, AIR-1979-SC. 170*, whereas it is held as follows :—

“Termination of employment on closure of the undertaking without payment of compensation and without either serving notice or payment wages in lieu of notice is not prohibited, payment of compensation and payment of wages for the period of notice are, therefore, not conditions precedent to closure.”

In this way, the workman is not entitled to any relief.

Issue No. 3 :

It has been admitted by the workman that he is selling vegetables and earns Rs. 6/7 per day. He started his business after 5/6 months of the closure of the factory. Hence he is not entitled to back wages to this extent even if he is reinstated.

Issue No. 4 :

As the workman has been terminated on closure, he is, therefore, admittedly not entitled for reinstatement. He is, therefore, not entitled to any relief.

The award is given accordingly.

Dated 27th September, 1984,

R.N. SINGAL,
Présiding Officer,
Labour Court, Faridabad.

Endorsement No. 25408, dated the 18th October, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,
Presiding Officer,
Labour Court,
Faridabad.

No. 9/5/84-Lab./7444.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Industrial Asbestos Products, Plot No. 5, Sector 6, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 467/1983

Between

SHRI S.A. KHAN, WORKMAN AND THE MANAGEMENT OF M/S INDUSTRIAL ASBESTOS PRODUCTS, PLOT NO. 5, SECTOR 6, FARIDABAD

Present :—

Shri H.R. Dua, for the workman.
Shri R. C. Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri S.A. Khan, workman and the management of M/s Industrial Asbestos Products, Plot No. 5, Sector 6, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri S.A. Khan was justified and in order? If not, to what relief is he entitled?

Notices were issued to both the parties. The claimant in his demand notice dated 9th September, 1982, stated that he was on leave up to 4th August, 1982 and was to report on 5th August, 1982, but incidentally he fell ill and was under the treatment of Dr. Sarat Chandra, Medical Officer, Pritipur Government Dispensary, District Cuttack and further that he applied for leave and sent his leave application under certificate of posting and remained under treatment up to 21st August, 1982. It is then alleged that after recovery he came to join duty but he was not allowed to join duty on 24th August, 1982. It was further alleged that the letter dated 18th August, 1982, terminating the services was received by him which was redirected to him by post. It was then alleged that the termination of his services was illegal and that he was entitled to reinstatement with full back wages.

3. The management in their written statement dated 14th January, 1983, pleaded that Model Standing Orders were applicable to their factory and that the claimant applied for leave which was sanctioned up to 3rd August, 1982 and that the claimant failed to report for duty on 3rd August, 1982, and that no application for leave or intimation was given to the management as to why the claimant was not attending his duty. It was then pleaded that the management waited up to 18th August, 1982 and a sum of Rs. 825 was sent to the claimant by money order dated 18th August, 1982 and a letter was also sent intimating that the services of the claimant had been terminated because he remained absent which was a serious act of misconduct under the Model Standing Orders. It was then pleaded that the amount due to the claimant was also sent by money order. It was further pleaded that on 24th August, 1982, the claimant came to the factory and demanded experience certificate which was given to him. It was further pleaded that the claimant absented himself from duty and never sent any application for extension of leave, due to which the management terminated his service on 18th August, 1982.

4. The claimant in his rejoinder dated 8th February, 1983, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 8th February, 1983 :—

(1) Whether the workman absented from 5th August, onward, If so, to what effect?

(2) Whether the termination of service of Shri S.A. Khan was justified and in order? If not, to what relief is he entitled?

6. It may be mentioned that the Management examined one witness and documents, Ex. M-1 to M-9 have been tendered into evidence. The workman did not produce any evidence even though several opportunities were given to him. Ultimately the evidence of the workman was closed. It may be further mentioned that on 20th September, 1984 none appeared on behalf of the workman and as such *ex parte* proceedings were ordered against him.

7. The Management examined Shri Virender Kumar Jain, Time-Keeper of the respondent as MW-1 who stated that the claimant applied for leave which was sanctioned but he did not join duty after expiry of the leave due to which his services were terminated *vide* letter Ex. M-2 and that the postal receipt of the letter sent to him was Ex. M-3. He further stated that the amount due was sent to the claimant by money order, *vide* receipt Ex. M-4 while Ex. M-5 was coupon of the money order. He further stated that Ex. M-6 was received from the workman and that certificate Ex. M-7 was issued on 24th August, 1982 and that letter Ex. M-8 and M-9 were written to the Post Master, Ballabgarh to report that money order had been correctly delivered to the addressee.

8. The testimony of Shri MW-1 Shri Virender Singh and documentary evidence led by the Management show that the leave was sanctioned upto 3rd August, 1982, *vide* application Ex. M-1 and that the letter terminating the service was issued on 18th August, 1982 in which it was recited that he remained absent for more than 10 days after the expiry of leave. Money-order coupon Ex. M-6 has been produced to show that the amount was received by the addressee. The amount due to the claimant was sent by money order, *vide* documents Ex. M-4 and M-5. The documents Ex. M-8 and M-9 show that the Post Master, Ballabgarh was asked to report whether the money order had been correctly delivered to the addressee. Since the leave taken by the claimant was expired on 3rd August, 1982 and no application for extending the leave was received by the Management, therefore the Management terminated the services of the claimant on 18th August, 1982 and remitted the amount by money order. It was argued on behalf of the management that the services were terminated because the claimant violated the provisions of Rules 16(4) of the Model Standing Orders (Industrial Employment Standing Orders) Punjab (Haryana First Amendment) Rules, 1969, according to which the claimant lost his lien when he remained absent for more than 10 days after the expiry of period of leave. The claimant has not adduced evidence in rebuttal, as already mentioned above. Consequently the evidence led by the management shows that the claimant absented himself from 5th August, 1982, without getting the leave extended and that his services have been terminated under Model Standing Order 16(4) as mentioned above on 18th August, 1982 and he is not entitled to any relief. The award is passed accordingly.

R. N. BATRA,

Dated the 10th October, 1984.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 1070, dated the 12th October, 1984

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6Lab/7542.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Autometers Ltd., Mathura Road, Ballabgarh.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 381/1982

between

SHRI SATISH KUMAR TYAGI, WORKMAN AND THE MANAGEMENT OF M/S AUTOMETERS
LIMITED, MATHURA ROAD, BALLABGARH

Present :-

Shri Amar Singh Sharma, for the workman.

Shri Rajesh Sharma, for the Management,

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Satish Kumar Tyagi, Workman and the Management of M/s Autometers Limited, Mathura Road, Ballabgarh, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Satish Kumar Tyagi, was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The workman in his claim statement dated 1st December, 1982, alleged that he was employed with the respondent management of 8th March, 1978 on permanent post of Assembler and was getting Rs. 386.34 paise per month and did not give any chance of complaint during the service period. It was then alleged that the Management terminated the services of the claimant illegally and wrongfully with effect from 15th June, 1982 in a revengeful spirit and in contravention of the Certified Standing Orders of the Company. He further alleged that no fair enquiry was conducted nor the workman was given any opportunity to cross-examine the Management witnesses and lead his defence. It was further alleged that the findings of the Enquiry Officer were not based on facts and that copy of said findings was not supplied to him in spite of several requests. It was further alleged that the statements of witnesses were not recorded before the claimant and that his signatures were obtained under threat and that show cause notice was not served on the claimant. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The respondents in their written statement dated 20th December, 1982 pleaded that the claimant was chargesheeted on 28th November, 1981 for using unrestrained, contemptuous, obscene and indecent language and for casting aspersions on the chastity of a female worker by calling her "Vaishya", which constituted acts of major misconduct. It was then pleaded that the claimant submitted his explanation and thereafter the domestic enquiry was held, in which he was given full opportunity to participate and defend himself and that after completing the said enquiry the Enquiry Officer submitted his report who found the claimant guilty of the charges of misconduct levelled against him. It was then pleaded that a show cause notice was also given to the claimant on 4th April, 1982, when the claimant wrote a letter dated 29th April, 1982 which was replied by the Management on 30th April, 1982 but the claimant did not submit his explanation in spite of another letter dated 7th June, 1982, asking him to submit his explanation within 72 hours, failing which he shall stand dismissed. It was further pleaded that the claimant wrote another letter dated 13th June, 1982 which was replied by the Management on 15th June, 1982 but he did not submit his explanation and stood dismissed from the services of the company with effect from 12th June, 1982. It was further pleaded that the dismissal of the claimant was legal and justified. It was further pleaded that there was no rule to supply the copy of the findings of the Enquiry Officer. It was then pleaded that the claimant was dismissed after complying with the principles of natural justice and in accordance with the Certified Standing Orders.

4. On the pleadings of the parties, the following issues were framed on 5th January, 1983 :—

(1) Whether the enquiry is fair and proper ? OPM

(2) Whether the termination of service of Shri Satish Kumar Tyagi was justified and in order ? If not, to what relief is he entitled ? OPM

5. It may be mentioned that issue No. 1 was tried as preliminary issue. The Management has examined two witnesses and documents Ex. M-1 to M-33 have been tendered into evidence. The workman appeared in the witness box as WW-1. After going through the evidence and hearing both the representatives my findings on the above issues are as under :—

Issue No. 1:

6. The Management has examined MW-1 Shri B.P. Pant who stated that he was appointed as Enquiry Officer in this case,—vide letter Ex. M-1 and that Ex. M-2 was the chargesheet, while Ex. M-3 was the explanation submitted by the claimant. He then stated that Ex. M-4 contained the proceedings of the enquiry held by him and that documents Ex. M-5 to M-17 were filed in those proceedings and that the documents Ex. M-18 to M-20 contained the miscellaneous correspondence and further that his report was Ex. M-21. He further stated that Shri Akber Ali used to represent in that enquiry and that the workman was given full opportunity to defend himself and to cross-examine the witnesses produced by the Management and further that copies of the proceedings of the enquiry were given to him. He further stated that he found the claimant guilty of the charges. MW-2 Shri H.L. Batra, Assistant Administrative Officer of the respondent stated that on receipt of the findings of the Enquiry Officer, Shri J.M. Ball, President of the Management passed the order copy Ex. M-22 and that show cause notice copy Ex. M-23 was sent to the claimant, who sent a letter, copy Ex. M-24, which was replied by the Management,—vide letter Ex. M-25 and that Ex. M-26 was the A.D. receipt. He further stated that thereafter the workman did not sent any reply and that letter copy Ex. M-27 was sent to the claimant and that Ex. M-28 was the postal receipt. He further stated that the order of dismissal

copy Ex. M-30 was sent to the claimant and that the acknowledgement receipt was Ex. M-31. He further stated that Ex. M-32 was the copy of the standing orders and that before passing the order of dismissal, the previous record of the claimant were seen. Letter Ex. M-33 was also provided by the Management. Shri Satish Kumar claimant has appeared as WW-1 and stated that he was employed in the respondent factory on 8th March, 1978 as an Assembler and was getting Rs. 500 per month including allowance and he did not give any chance of complaint to the Management during his service period. He further stated that he gave reply to the chargesheet. He further stated that the copy of the Standing Orders was not supplied to him. He further stated that he was not provided any facility by the Enquiry Officer nor he was permitted to be represented through Shri G.S. Chaudhary in that enquiry while Shri Akber Ali was an illiterate person. He further stated that the statements of witnesses were not recorded in his presence, and that he was not given full opportunity to cross-examine them. He further stated that the copy of the findings of the Enquiry Officer was not supplied to him and that no show cause notice was given to him before dismissal. He further stated that he affixed his signatures on the proceedings of the enquiry to get the copies of the documents and that he was sitting idle since he could not get any job.

7. A perusal of the above evidence would show that on 28th November, 1983 claimant was charge-sheeted,—vide chargesheet Ex. M-2 on the basis of the complaint made by Miss Ashok Kumari to the effect that the claimant called her Vaishya and had thus used unrestrained, contemptuous, obscene and indecent language and casting aspersions on the chastity were acts of major misconduct. The claimant denied the allegation in his explanation Ex. M-3, and stated that he was abused by Miss Ashok Kumari and no action was taken on his complaint. Shri B. P. Pant was appointed as Enquiry Officer,—vide letter Ex. M-1. Ex. M-4 contains the enquiry proceedings which show that the Management examined three witnesses, namely, Shri S.P. Gupta MW-1, Miss Ashok Kumari MW-2 and MW-3 Shri Jai Pal Sirgh and documents were produced before the Enquiry Officer which were Ex. M-5 to M-20. The workman examined six witnesses in the said enquiry including himself, namely, Shri Inder Lal WW-1, Shri Nanak Chand WW-2, Kumari, Indira Sharma WW-3, Shri Ravinder Singh WW-4 and Shri Girraj Singh WW-5 and produced the five documents in the said enquiry. The claimant himself appeared as WW-6 in said enquiry. After considering the entire evidence, the Enquiry Officer submitted his report copy Ex. M-21 holding the claimant guilty of the charge of misconduct alleged against him. The show cause notice copy Ex. M-23 was sent to the workman and he sent his letter copy Ex. M-24 and ultimately the order of dismissal copy Ex. M-27 was passed against the claimant. Letters Ex. M-27 and M-30 were sent by the Management in that respect. The enquiry proceedings show that the claimant was represented by Shri Akber Ali and he cross-examined the witnesses produced by the Management. All this evidence therefore goes to prove that the enquiry was held against the claimant in a proper manner, and that the Enquiry Officer gave his findings on the basis of the evidence produced by both the parties.

8. It was argued on behalf of the claimant that Miss Ashok Kumari had used abusive language by calling him as bastard and a village rustic fellow, but his defence was not believed and that no action was taken against Miss Ashok Kumari. The Enquiry Officer has based his finding on the evidence produced before him and found the claimant guilty of the charge levelled against him by calling Miss Ashok Kumari as Vaishya. In the ruling reported as *The East India Hotels vs. Their Workman and others* 1974 Lab. I.C. 532, it is laid down that when a proper enquiry has been held by an employer and the findings of misconduct has support from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body and that the Tribunal cannot reappraise the evidence and arrive at a conclusion different from that arrived at by the domestic Tribunal. Following this ruling, no interference is called for with the report of the Enquiry Officer. He has considered the evidence led by both parties and found the claimant guilty of the charge levelled against him.

9. It was then argued that copies of documents were not supplied to the claimant due to which the enquiry stood vitiated. The proceedings of the enquiry copy Ex. M-4 show that the letter written by the claimant was duly considered by the Enquiry Officer,—vide page 1, 2, 3 and 5 of the enquiry proceedings. The Enquiry Officer permitted the claimant to inspect all the documents on 2nd January, 1982 as mentioned at page 3 of the enquiry proceedings. At page 5 of those proceedings, it is mentioned that the copy of the standing orders was also supplied to the claimant. These proceedings show that thereafter the complainant did not complaint regarding non-supply of any document and cross-examined the witnesses produced by the management and the claimant himself produced 5 witnesses and also appeared before the Enquiry Officer. Consequently the arguments advanced on behalf of the claimant is without any force.

10. It was further argued that the claimant was not allowed to be represented through Shri G.S. Chaudhary. Ex. M-32 is the copy of the Standing Orders. According to clause 28(a) of the said documents the workman can be assisted by another workman of his choice. Shri G.S. Chaudhary was not a workman in that factory and, therefore, he could not represent the claimant in the enquiry. On the other hand, Shri Akber Ali represented the claimant in the said enquiry as mentioned above. In the ruling reported as *The Central Bank of India Ltd. v. Karunamoy Banerjee*, 1968 Lab. I.C. 218, it is laid down that the workman has no right to be represented by the Union in an inquiry before the Management. This ruling is distinguishable facts because according to the Standing Orders he can be represented by another workman and Shri Akber Ali therefore represented him. The argument, therefore fails.

11. In view of the above discussion, it is held that the enquiry was fair and proper.

12. The claimant was chargesheeted under sub-clause (17) of clause 27 of the standing orders of the company copy Ex. M-32, according to which any act subversive of discipline amounts to major misconduct. It was argued on behalf of the workman that the punishment awarded to the claimant was disproportionate to the misconduct attributed to him. In the present case, the claimant alleged to have called Miss Ashok Kumari as Vaishya but the plea of the claimant that he was called as bastard and village rustic fellow by Miss Ashok Kumari has not been accepted by the Management. The behaviour of the workman deserve to be condemned, but the punishment of dismissal from service is not proportionate to the misconduct. It would not be out of place to mention here that the dismissal of an employee can result in starvation of his family members. It is for this reason that the provisions of Section 11-A of the Industrial Disputes Act have been added and the Industrial Tribunal can interfere in appropriate cases, the ends of justice would, therefore, be met if the claimant is not given three annual increments in time scale and is deprived of his back wages for his misconduct, but he should be reinstated. The award is passed accordingly.

R. N. BATRA,

Dated the 10th October, 1984.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Enst. No. 1077, dated the 15th October, 1984

Forwarded (four copies) to the Commissioner & Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.

The 30th October, 1984.

No. 9/5/84-6Lab/7164.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Sub-Divisional Officer, City Op. Sub-Division, H.S.E.B., Bahadurgarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 63 of 1982

between

SHRI JAGBIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S SUB-DIVISIONAL OFFICER, CITY OP. SUB-DIVISION, H.S.E.B., BAHADURGARH

Present :

Shri S.N. Vats, A. R., for the workman.

Shri N. P. Singh, Law Officer, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute to this Court, between the workman Shri Jagbir Singh, and the management of M/s Sub-Divisional Officer, City Op. Sub. Division, H.S.E.B., Bahadurgarh, for adjudication,—vide Labour Department Notification No. I.D./RTK/12/82/18603, dated 19th April, 1982 :—

Whether the termination of service of Shri Jagbir Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was working with the management since 2nd May, 1973 and that his services were terminated on 4th October, 1979 illegally without any notice or payment of retrenchment compensation as envisaged under section 25(F) of the Industrial Disputes Act, 1947. A reply was filed by the respondent, in which, preliminary pleas taken were that the reference is bad in law, because the petitioner has got no existing right to file the same. On merits, it is alleged that the petitioner was involved in a theft case and so his services were terminated on 4th October, 1979, because he was an work-charged employee and as such there was no necessity of giving any notice to the petitioner before terminating his service. It is further alleged that the defendant Board suffered huge losses, because of the criminal activities of the petitioner and that the respondent Board shall take appropriate action regarding reinstatement in due course of time. In the replication filed by the workman all the pleas taken in the reply have been controverted.

3. On the pleadings of the parties, following issues were settled for decision on 28th September, 1982:—

- (1) Whether the reference is bad in law as per reason given in preliminary objection ?
- (2) Whether the termination of services of Shri Jagbir Singh was justified and in order ? If not, to what relief is he entitled ?

4. The management examined two witnesses MW-1 Shri Ajmer Singh XEN and MW-2 Shri B.R. Nehra, S.D.O. The workman appeared as his own witness as WW-1. My findings on the issues framed are as below :—

Issue No. 1 :

5. The learned legal adviser of the respondent Board Shri N.P. Singh did not press this issue. So this issue is answered against the respondent Board.

Issue No. 2 :

6. It is not denied by the respondent that the petitioner was employed in the year 1973.. It is not in dispute that his services were terminated without any charge sheet or enquiry on 4th October, 1979 simply, on the ground that the petitioner was looked for an offence under section 379 of the Indian Penal Code. There is no plea on behalf of the respondent that any chargesheet was issued to the workman or any enquiry was held. The question would be as to whether services of the petitioner could be terminated in a summary manner as the respondent has done,—vide his order dated 19th December, 1979, copy of which is Exhibit MW-2/2. The order of termination read as under :—

“Since you are indulged in a theft case such your services are terminated with effect from 4th October, 1979”.

7. The said order was passed by the S.D.O., City Operation Sub-Division, Bahadurgarh. During the course of arguments the learned Authorised Representative of the workman has brought to my notice that the petitioner has since been acquitted in the criminal case by the learned Judicial Magistrate 1st Class, Bahadurgarh, vide his judgement dated 17th May, 1981. Be that it may be so, the respondent Board could not have terminated the services of the petitioner without proper chargesheet, notice and enquiry. Simply because the petitioner was involved in a criminal case, is no ground to terminate his service. On the date of termination order the petitioner has put in about six years of service with the respondent. So the order of termination suffers from the vices of illegality, arbitrariness and the same is in gross violation of the provisions of the Industrial Disputes Act, 1947.

8. Now the question would be as to whether the petitioner can be awarded full back wages. In the behalf reference can be made to *AIR 1979 S.C. 75 Hindustan Tin Works Private Ltd. versus Employees of Hindustan Tin Works Private Ltd.* The extract quoted in the said authority can be extracted here with advantage :—

“Ordinarily therefore, a workman whose services has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer”.

And again :

“Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure”.

9. The learned legal adviser of the respondent Board Shri N.P. Singh contended that since the workman slumbered of his termination for two long years, because the demand notice was given by him on 23rd October, 1981, whereas his services were terminated on 4th October, 1979, so the workman is not entitled to back wages for this period. In support of his contention the learned counsel could not produce any authority. The learned

Authorised Representative of the workman Shri S.N. Vats contended that since criminal proceedings were pending against the workman, so he was justified in filing a demand notice only after culmination of the criminal proceedings. Criminal trial ended on 27th May, 1981 resulting in the acquittal of the workman, who thereafter served a demand notice on 23rd October, 1981. So it cannot be held that the workman committed any inordinate delay in giving demand notice. So in case of reinstatement, the workman shall be entitled to full back wages.

10. The crux of my foregoing discussion is that the order of termination of services of the workman is illegal and void *abinitio*, because the same was passed in flagrant disregard of the provisions of the Industrial Disputes Act and as such the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated the 27th August, 1984.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 63-82/3129, dated 23rd September, 1984

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court,
Rohtak.

No. 9/5/84-Lab/7165.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s The Sonapat Coop. Sugar Mills Ltd., Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 207 of 79

Between

SHRI VIJENDER SINGH, WORKMAN AND THE MANAGEMENT OF M/S. THE
SONEPAT CO-OPERATIVE SUGAR MILLS LIMITED, SONEPAT

Present :

Shri S.S. Gupta, A.R., for the workman.

Shri Bhagat Singh, L.A., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Vijender Singh and the management of M/s. The Sonapat Co-operative Sugar Mills Ltd, Sonapat, to this Court, for adjudication, *vide* Labour Department Notification No. SPT/105-79/49082, dated 21st October, 1979 :—

Whether the termination of services of Shri Vijender Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as Labour Officer in the year 1976 and that his work and conduct was satisfactory during the tenure of his employment but the management terminated his service illegally on 3rd January, 1979 and that the order of termination was against the principles of natural justice and also in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. A written statement was filed by the respondent. It is alleged that the petitioner was appointed as Labour Officer in supervisory grade II and as such the petitioner is not a 'workman' as defined in section 2 (s) of

the Industrial Disputes Act, 1947. It is further alleged that the services of the workman were terminated as per clause number 4 of the order of appointment, dated 9th November, 1976.

4. In the rejoinder filed by the workman he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issues were framed on 4th March, 1980 :—

- (1) Whether the applicant is a workman as defined in section 2 (s) of the I.D. Act ?
- (2) Whether the termination of services of Shri Vijender Singh was justified and in order ? If not, to what relief is he entitled ?

5. At this stage it may be stated that issue No. 1 was ordered to be tried as preliminary issue. The same was decided by my learned predecessor Shri B.L. Dalal,—vide his order dated, 14th November, 1981. He found this issue in favour of the workman. So the controversy regarding petitioner being a workman stands already clinched. The only issue which survives for consideration is No. 2. My findings on issue No. 2 are as under :—

Issue No. 2 :

6. The learned Legal Assistant for the respondent-management forcefully contended that the termination of services of the workman was in accordance with clause 4 of his letter of appointment, photo copy of which is Ex. M-2. The said clause can be reproduced hereunder for ready reference :—

“That you can leave the mills service by submitting one month notice or one month gross salary in lieu thereof. This condition will equally apply either side, but it will not apply to the Mills during the period of your probation if your services are terminated for reasons of misconduct or otherwise”.

7. Admittedly the period of probation of the workman had expired on the date of the order of termination which was passed on 3rd January, 1979, because as per the stipulation No. 2 of his appointment letter, the workman was on probation for a period of one year from the date of his appointment. He had assumed his charge on 9th November, 1976. So his period of probation which was never extended, expired on 8th November, 1977. Now let us revert to the order of termination passed against the workman. The same is dated 3rd January, 1979 and reads as under :—

“The services of Shri Vijender Singh, Labour Officer are no longer required. He is being paid one month salary in lieu of the notice period, as per the terms and conditions of his appointment”.

Copy of the same is Ex. W-1. In this very context the learned representative of the management argued that the services of the workman were terminated on account of his mis-conduct and in that behalf he referred to an order of the Managing Director of the respondent, dated 3rd January, 1979, photo copy of the same is Ex. MW-2/2. I have gone through the said order. The crux of the same is that the workman along with Shri Satbir Singh, Public Relations Assistant of the respondent-management was sent to Delhi for getting the furnace oil sample tested and there they also contacted the proprietor of M/s. Hind Electric Corporation, Bhagirath Place, Delhi, with whom the respondent-management had placed order for the supply of capacitors. There two officials misguided the said concern by stating that the capacitors should not be applied because Shri Ram Bhaj who had placed order for the supply of the same was not competent to do so. Actually Shri Ram Bhaj had gone to the said concern under the orders of the Managing Director. So on the basis of these allegations the Managing Director found that these two officials have unnecessarily meddled into the functioning of the other officials of the mills and thereby harmed the reputation of the respondent. In the same order he directed that these two officials should be relieved from the duties after payment of one month salary in lieu of notice.

8. Now the question would be as to whether the Managing Director could do so. The learned authorised representative for the workman Shri S.S. Gupta has drawn my attention to 1981 Vol. II LLN 569 *Beco Eng. Co. Ltd versus State of Punjab and others*. From this authority a pointed reference was made to paragraph number 8 of the judgement. The same can be extracted with advantage :—

“The Labour Court has found under issue (1) that the order terminating the service of Gurdial Singh was neither justified nor in order. This finding again being one of fact cannot be challenged in writ proceedings. Even otherwise, the finding of the Labour Court on this point is also correct. It is admitted that the provision contained in S. 25F of the Act was not complied with when the service of Gurdial Singh was terminated. It has been rightly found that it was obligatory for the management to comply with the provisions contained in this section. It is true that Cl. (10) of the appointment letter did provide that the service of the workman could be terminated by giving him one month's notice or one month's pay in lieu thereof. The management, however, could not take advantage of this clause in the appointment letter in view of the provisions contained in S. 25-F of this Act.”

9. The observations made in this para substantially repel the contention raised on behalf of the respondent that the termination of services of the workman has been made in accordance with clause 4 of his letter of appointment.

10. The learned Authorised Representative for the workman contended that the order of termination, dated 3rd January, 1979, though on the face on it, is innocuous but the same in reality is punitive in nature, because the same was passed after the petitioner was found to have mis-conducted himself in his working. So the Court can go behind the order as held in 1984 Supreme Court Cases (Labour & Services) page 256 Anup Jaiwwal *versus* Government of India and others.

11. So the order passed against the workman is not an order simplicitor of termination but when the veil is lifted its reality comes into focus. The same was passed for alleged misconduct of the workman, though no enquiry was held by the competent authority to prove the same. Under these circumstances there is no difficulty in holding that the order of termination, dated 3rd January, 1979 passed against the workman is in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, because no retrenchment compensation was paid to the workman or any notice was given to him. So the same is void *ab initio* and illegal and as such this issue is returned in favour of the workman.

12. In the light of my decision on issue No. 2, the order of termination, dated 3rd January, 1979 is held to be illegal and void. The workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.
Camp Court, Sonapat.

Dated: the 4th September, 1984.

Endorsement No. 207/79/3232, dated the 1st October, 1984.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court,
Rohtak.
Camp at Sonapat.

No. 9/5/84-6 Lab/7166.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Modern Farms, AIDS-A-5/C, Modern Industrial Estate, Bahadurgarh, Distt. Rohtak :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 12 of 82

Shri Bir Bahadur, workman, and the management of M/s Modern Farms, AIDS A-5/C, Modern Industrial Estate, Bahadurgarh, Distt. Rohtak.

Present:—

Shri Harish Chander, A.R. for the workman.
Shri M.M. Kaushal, A.R. for the management.

AWARD

1. An Industrial Dispute reproduced below having arisen between the workman and the management of M/s. Modern Farms, AIDS-A-5/C, Modern Industrial Estate, Bahadurgarh, Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the same to this Court for adjudication,—*vide* Labour Department Notification No. ID/RTK/128/81/636, dated 5th January, 1982 :—

Whether the termination of services of Shri Bir Bahadur, was justified and in order? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were sent to the parties. The parties appeared. The workman alleged that he was appointed as helper by the management on 3rd January, 1980 on monthly wages

of Rs. 290 and on 10th May, 1981 he proceeded on leave upto 24th May, 1981 and went to his village, where he fell ill and as such he applied for medical leave on 23rd May, 1981 upto 16th June, 1981 and when he returned to the factory on 16th June, 1981, the management did not allow him to resume his duties and that his services were terminated without any notice or charge-sheet and without paying compensation as contemplated under section 25(F) of the Industrial Disputes Act, 1947.

3. A detailed reply has been filed by the respondent-management, in which the preliminary objections taken are that the reference is bad in law, because the workman, of his own accord, submitted resignation on 3rd June, 1981 after fully and finally settling his accounts with the management. On merits, it is alleged that the workman was appointed on 2nd July, 1980 and not on 3rd January, 1980. It is further alleged that the workman applied for 20 days leave from 11th May, 1981 to 30th May, 1981, which was not sanctioned as the leave was not due to the workman and the workman was informed about non-acceptance of the application but the workman without sanction of leave absented from his duties w.e.f. 9th May, 1981. It is admitted that the medical certificate was received from the workman on 28th May, 1981 advising him rest from 23rd May, 1981 to 1st June, 1981 but no medical certificate was received advising him rest from 23rd May, 1981 to 16th June, 1981 as alleged by the workman. It is further alleged that the workman did not resume his duties after 1st June, 1981 but tendered his resignation on 3rd June, 1981, which was accepted on the same date. On these grounds, it is alleged that there was no question of terminating the services of the workman illegally as alleged.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the management.

5. On the pleadings of the parties, following issues were settled for decision on 29th April, 1982:—

- (1) Whether the workman abandoned his service by remaining wilfully absent ?
- (2) Whether the workman remained gainfully employed during the intervening period ? If so, to what effect ?
- (3) Whether the termination of services of Shri Bir Bahadur was justified and in order ? If not, to what relief is he entitled ?

6. Before embarking upon discussion of the issues framed, the learned representative of the management Shri M.M. Kaushal raised a caveat that the onus of issue No. 3 should be upon the workman as held in 1984 FLR 38 Airtech India (P) Ltd., Vs. State of U.P. and others. There can be no dispute with the law laid down in the said authority but the question of onus becomes abstract once parties go through the gamut of adducing evidence. In this case, this legal contention has been raised on behalf of the management after the parties had already concluded their evidence. My findings on the issues framed are as below:—

Issue No. 1:—

7. To prove this issue, the management examined MW-1 Shri Sudershan Singh, one of his partners. He stated that the workman was employed by the respondent-management on 2nd July, 1980 and he started making contributions to the ESI fund from that month and that the workman applied for leave from 11th May, 1981 to 30th May, 1981,—vide application Ex. MW-1/5 on 1st May, 1981 but his application for leave was declined as no leave was due to the workman and in that behalf, the workman was given intimation. He further stated that the workman of his own accord absented from work w.e.f. 9th May, 1981 and thereafter he submitted his resignation on health ground on 3rd June, 1981.

8. On the other hand the workman appeared as his own witness as WW-1 and made allegations completely in consonance with the allegations made in the claim statement and as such, I need not suffer repetition.

9. On the basis of evidence discussed above, the learned counsel for the respondent-management Shri M.M. Kaushal contended, that the workman was unjustified in proceeding on leave, specially when his application for leave was not allowed by the management and that if the workman had any grouse against non-acceptance of the application, he could settle the matter with the management and not become absent from duty *suo moto*. He further contended that in view of the admission of the workman that the resignation letter Ex. MW-1/3 and the receipt Ex. MW-1/4 were signed by him, there is no question of this document being forged one. On the other hand the learned Authorised Representative for the workman contended that if the workman had resigned on 3rd June, 1981, there was no question of the workman coming to the respondent-management to resume his duties on 16th June, 1981 along with the fitness certificate photostat copy of which is mark "A". I am inclined to go with the learned representative of the management and hold that the workman voluntarily resigned from service on 3rd June, 1981 after finally settling his claim with the management. The contention of the learned Authorised Representative of the workman that the workman being illiterate person was duped into signing blank documents, upon which the management later on forged letter of resignation Ex. W-1/3 is not tenable, because the workman has not alleged in the rejoinder filed by him that the letter of resignation was procured by fraud/force. So, I hold that the workman voluntarily resigned from service on 3rd June, 1981 and as such this issue goes in favour of the management.

Issue No. 2:

10. On this issue, there is no cogent evidence on behalf of the management, who made efforts to adduce evidence that the workman remained gainfully employed after he abandoned the service of the respondent. But the efforts of the respondent in that behalf misfired, because MW-2 Shri Shanker Mishra did not support the contention of the management. So, this issue goes against the respondent.

Issue No. 3:

11. Since issue No. 1 has gone against the workman and in favour of the management, there is no necessity for the decision of this issue, because I have already held that the services of the workman were never terminated by the respondent and that he voluntarily resigned from service on 3rd June, 1981.

12. In the light of my decision on issue No. 1, I find that the present reference is bad in law, because there was no termination of service of the workman, as alleged by him. This reference is answered and returned accordingly. There is no order as to cost.

Dated the 5th September, 1984.

B. P. JINDAL
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 12-82/3233, dated the 1st October, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

The 22nd October, 1984

No. 9/5/84-6 Lab/7167. —In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and management of the Haryana Roadways, Rohtak :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 68 of 1981.

Between

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF THE HARYANA ROADWAYS,
ROHTAK

Present :—

Shri S.N. Vats, A.R. for the workman
Shri S.C. Singal, A.R. for the management.

AWARD

1. An industrial dispute reproduced below, having arisen between the workman and the management of the Haryana Roadways, Rohtak, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, to this Court, for adjudication :—

Whether the termination of services of Shri Om Parkash, s/o Shri Kanahya Lal was justified and in order ?
If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed by the respondent seven years ago, as a conductor and his services were terminated by the respondent on 27th October, 1978. He has further challenged the validity of the domestic enquiry allegedly held against him on the ground that the Enquiry Officer was partial towards the respondent and that he was not furnished list of charges before commencement of the enquiry and further he was not given copies of the complaint of the Inspector on the basis of which domestic enquiry was ordered. He further alleged that he was not given copy of the findings of the Enquiry Officer, along with the show-cause notice before passing of order

of dismissal and further he was not given full opportunity of adducing his defence and as such he has alleged that his termination was not proper and valid and against the provisions of the Industrial Disputes Act, 1947.

3. A reply was filed by the respondent. It is alleged that the workman was employed on 12th May, 1971 on temporary basis. He has further controverted in toto other allegations made in the Claim Statement. It is averred that the workman was given substance of the complaint of the Inspector and further he was given option to inspect the record and the witnesses were examined in his presence and was given full opportunity of cross-examination. It is further alleged that the services of the workman were terminated after giving him full opportunity of defence and after holding proper enquiry as per the principles of natural justice.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the respondent.

5. On the pleadings of the parties, the following issues were settled for decision on 14th October, 1981 :—

(1) Whether a fair and proper enquiry was held by the management prior to termination of the workman ?

(2) If not, whether the termination of services of the workman was justified and in order? If not, to what relief is he entitled.

6. Subsequently on an application filed by the respondent, my learned predecessor Shri B.L. Dalal ordered that issue No. 1 regarding domestic enquiry shall be tried as a preliminary issue. This order was passed by him on 2nd December, 1981. So, my findings on the preliminary issue framed are as under :—

Preliminary Issue No. 1:

7. The learned representative of the parties agreed that while deciding this issue this Court is not concerned with the question as to whether on the evidence before the Enquiry Officer passing the order against the employee, there was adequacy evidence to justify the order. The court has to concern with the regularity of the enquiry. If the enquiry is not vitiated on the ground of any procedural irregularity, the Court is not concerned to decide whether the evidence justified the order of termination.

8. Viewed from this angle the learned representative for the workman Shri S.N. Vats contended that since no list of documents and witnesses were supplied to the workman along with the article of charge, enquiry proceedings stand vitiated. He further contended that a reply was filed by the workman to the charge-sheet given to him but the order upon the same passed by the General Manager, Haryana Roadways, Rohtak is not a speaking order and further no adequate opportunity of defence was afforded to the workman and as such the Enquiry Officer did not follow the procedure laid down.

9. In my opinion, the learned Authorised Representative for the workman was on slender footing in raising these contentions. There was only one charge against the workman and the same is sufficiently detailed in the charge-sheet, copy of which was given to him. Law contemplates that when disciplinary proceedings are taken against a Government servant, he should be given adequate opportunity to defend himself against the charges framed against him. While the scope of such opportunity may differ from case to case, salutary rules framed in that behalf are meant to enjoin upon Government to provide a list of witnesses and documents are intended simply to inform the servant about the import of charges against him and if the employee/servant is already aware of them, omission to furnish a list of witnesses or of documents cannot vitiate the enquiry. I am fortified in my observations from the law laid down 1975 (I) SLR 500 Mangal Singh vs. Commissioner of Himachal Pradesh Government Transport, Himachal Pradesh and another. As already observed there was only one charge against the workman, i.e., that when the inspection was made by the local flying squad, seven passengers were found travelling without tickets, so there is no question of the workman not knowing the exact nature of the charge against him. Furthermore the workman filed a reply to the charge-sheet given to him and no umbrage was taken by him that he has not been furnished list of documents and that of witnesses. Furthermore in the charge-sheet, an option was given to the workman to examine documents, on any working day, relevant to the enquiry, though the workman did not choose to avail of this opportunity.

10. Since there was one charge against the workman, the General Manager, Haryana Roadways, Rohtak was justified in finding the explanation furnished by the workman being unsatisfactory. So the order passed by the General Manager, Haryana Roadways, Rohtak for domestic enquiry does not suffer from the vice of inadequacy.

11. The last contention of the learned authorised representative of the workman was that no sufficient opportunity was given to the workman to produce his defence. From the evidence on record, it is proved that the workman was given three opportunities to produce his defence, i.e., 31st May, 1978, 24th June, 1978 and 29th July, 1978. The workman has placed on record a Court certificate Ex. WW-1/3 evidencing that on 31st May, 1978 he appeared in the Court of learned Judicial Magistrate 1st Class, Rohtak in some criminal case. So his absence on that date before the Enquiry Officer was justified. Similarly the workman alleged that on 24th June, 1978 he was indisposed and in that behalf he has placed on record Ex. WW-1/2 medical certificate showing that from

3rd June, 1978 to 25th June, 1978 the workman was indisposed. The 3rd date fixed was 29th July, 1978 for evidence of the workman. On that date the explanation furnished by the workman is that he did go to Rohtak on that date to produce his defence but the Enquiry Officer was not available. In that behalf the learned Authorised Representative of the workman made a pointed reference to the non-committal statement of Shri J. L. Gandhi, Enquiry Officer, who was examined as MW-1. Be that it may be so, no grievance of the same was made by the workman at the time when he was given final show-cause notice before passing final order of termination against him. On behalf of the workman his counsel cited 1972 SLR 845 B.D. Gupta v/s. State of Haryana. This Authority has no application to the facts of the present case. On behalf of the respondent 1974 II SLR 679 B.L. Kohli v/s. Union of India and others was also cited to succour the contention that there is no denial of reasonable opportunity when the employee was given opportunity to inspect the record. In this case also such an opportunity was given to the workman, though he did not choose to avail of the same. Shri S.C. Singal, learned Legal Assistant of the respondent also relied upon 1977 I SLR 750 State of Haryana and another v/s. Rattan Singh. This Authority is not relevant for the decision of this issue, because scope of this issue is limited to the extent that this Court has to see as to whether the enquiry was regular and not as to whether the Enquiry Officer had before him sufficient evidence to give an adverse finding against the employee.

12. In the light of my foregoing discussion, I find that the enquiry conducted against the workman was legal and valid and no infirmity can be found with the procedure followed. So this issue goes in favour of the respondent.

13. Since the preliminary issue regarding domestic enquiry has gone against the workman, the respondent was justified in terminating the services of the workman in furtherance of the same. So issue No. 2 has to be answered against the workman.

14. In the light of my decision of this issue, it is held that the termination of services of the workman was justified and the domestic enquiry held against him was legal and valid. So this reference is answered and returned accordingly. There is no order as to cost.

Dated, the 6th September, 1984.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 68/81/3240, dated 1st October, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,

No.9/5/84-6 Lab/7167-A.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and management of Executive Engineer, Operation Div. HSEB, Rohtak:—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 111 of 81
between

SHRI BHARAT BHUSHAN, WORKMAN AND THE MANAGEMENT OF EXECUTIVE ENGINEER, OPERATION DIVISION, HARYANA STATE ELECTRICITY BOARD, ROHTAK

Present:—

Shri S.S Gupta, A.R. for the workman.
Shri N.P. Singh, Law Officer for the management.

AWARD

1. An industrial dispute reproduced below having arisen between the workman and the management of Executive Engineer, Operation Division, Haryana State Electricity Board, Rohtak, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the same to this Court for adjudication, —vide Labour Department Notification No. ID/SPT/49/81/39185, dated 25th August, 1981:—

Whether termination of services of Shri Bharat Bhushan was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was employed by the respondent on 17th April, 1979 as a T-Mate and his services were terminated by the respondent w.e.f. 5th January, 1981 and his termination is illegal, unjustified, arbitrary and against the principles of natural justice and in gross violation of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, the claim of the workman has been vehemently controverted. It is alleged that the reference is bad in law and the petitioner has no existing right against the respondent. It is also denied that the petitioner was appointed on 17th April, 1979. The case is that he was appointed on 22nd May, 1980. It is also alleged that the services of the workman, were terminated, because the work for which he was employed had been completed and that no retrenchment compensation was given to him as envisaged under section 25(F) of the Industrial Disputes Act, because the workman, on the date of the termination of service had not completed 240 days of his work. In the rejoinder filed by the workman, most of the pleas projected by the management have been controverted.

4. On the pleadings of the parties, following issue was settled for decision on 6th January, 1982.

1. Whether the termination of services of Shri Bharat Bhushan was justified and in order? If not, to what relief is he entitled?

5. My finding on the issue framed is as below:—

Issue No. 1:

6. The management examined Shri R.K. Gupta, Executive Engineer, Panipat, who stated that he remained posted as Executive Engineer from April 1980 to May 1981 and that the workman was employed on 22nd May, 1980 on work-charge basis as T-Mate and that he was given 15 days notice on 17th December, 1980 and his services were terminated on 5th January, 1981 without payment of any compensation, because the workman had not put in 240 days of service with the respondent. In corroboration is the statement of MW-2 Shri B.K. Verma, S.D.O., Sub-Division No. 4, H.S.E.B., Rohtak. The workman appeared as his own witness as WW-1 and made a statement completely in consonance with the allegations made in the Claim Statement, so, I need not suffer repetition.

7. The learned counsel for the workman Shri S.S. Gupta rightly contended that from the certificate Ex. W-1 it is proved that prior to his engagement by the respondent, the workman worked as Apprentice Lineman w.e.f. 18th April, 1979 to 17th April, 1980 with the S.D.O., Operation Sub-Division No. 1, H.S.E.B., Rohtak. This is admitted case of the workman that the workman was employed on workcharge basis as T-Mate w.e.f. 22nd May, 1980 and his services were terminated without payment of any compensation w.e.f. 5th January 1981. The only umbrage taken on behalf of the respondent was that the period of service of the workman as Apprentice Lineman cannot be counted towards his subsequent employment with the respondent and that if that period is excluded the workman has admittedly not put in 240 days of actual service with the respondent, which may entitle him to the benefit of section 25(F) of the Industrial Disputes Act, 1947. In my opinion, the learned legal adviser of the respondent Board was not on sound footing in so arguing, because the definition of term "workman" as given in section 2(s) is very clear. The same needs as under:—

"Workman" means any person (including an apprentice) (emphasis mine) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person.....

8. So the term "workman" included Apprentice also. Authority cited on behalf of the workman was 1983 Lab. I.C. 1185, the management of Tungabhadra Sugar Works (P) Ltd, Appellant Vs. The Presiding Officer Labour Court, and another, Respondents. In this authority observations made can be quoted with advantage:—

"In order to be a "workman" under S.2(s) of the Act whether a person is a Trainee, Apprentice or any other person, it has to be established that he is employed in an industry. The employment has necessarily to be in respect of an Industry. In other words, any person, whether he is an apprentice or not, can be regarded as a workman only if he is employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment are express or implied. It is, therefore, clear that it is not enough to establish that the person claiming such a status is an apprentice".

9. On the other hand the learned counsel of the respondent contended that since the workman was earlier employed as apprentice Lineman, so, his services for the period 18th April, 1979 to 17th April, 1980 cannot be counted. In my opinion, the contention of the learned counsel is against the observations made in the authority referred to above. Beside the authority cited on behalf of the workman, the definition of the term "workman" given in the Act itself, reproduced above, makes it clear that an Apprentice is also a workman. Though the learned counsel for the workman took me through the statement of witnesses examined by the

management but they hardly relevant to dispose of the controversy in hand, because the learned counsel for the respondent Board frankly conceded, that, in case, services rendered by the workman as an Apprentice are counted then the workman has definitely put in more than 240 days of actual service with the respondent. As regards the gap of a few days between the period of service of the workman as an Apprentice Lineman and subsequently as a work charge T-Mate, on behalf of the workman, reliance was placed upon 1980 (2) LLJ 72 Santosh Gupta V/s State Bank of Patiala. So in my opinion the petitioner was employed by the respondent on 18th April, 1979 as an Apprentice Lineman, though the respondent Board was dishonest in suppressing this fact from the Court, because no such plea was taken by the respondent in the reply filed to the Claim Statement of the workman. Since the workman had completed more than 240 days of actual service with the respondent, his service could not have been terminated by the respondent Board without complying with the provisions of section 25(F) of the Industrial Disputes Act, 1947, and as such the order of termination copy of which is Ex. M-1 is illegal and unlawful and not sustainable in the eye of law and further the same is in gross violation of the provisions of the Industrial Disputes Act, 1947. So, this issue, is answered in favour of the workman.

10. Since the services of the workman were terminated in an unlawful manner, without giving him notice and awarding retrenchment compensation under section 25(F) of the Industrial Disputes Act, 1947, the workman is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly. No costs.

Dated the 6th September, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 111/81/3241, dated 1st October, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6 Lab./7168.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Hindustan Everest Tools Limited, Jatheri, Distt. Sonapat.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 60 of 81

between

SHRI NAFE SINGH, WORKMAN AND THE MANAGEMENT OF M/S HINDUSTAN EVEREST
TOOLS LIMITED, JATHERI, DISTT. SONEPAT

Present :

Shri M.S. Rathi, A.R., for the workman.
Shri C.M. Lal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman and the management of M/s Hindustan Everest Tools Limited, Jatheri, Distict Sonapat, to this Court, for adjudication :—

Whether the termination of services of Shri Nafe Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was in the employment of the respondent since 10th October, 1968 as a Strainer and that because of fever he had applied for one day leave for 8-10-80 and sent to the respondent, a medical certificate issued by Dr. S.B. Tyagi, R.M.P. Physician and Surgeon, recommending sick leave from 8-10-80 to 15-10-80 and again another medical certificate from the same Doctor recommending him sick leave from 15-10-80 to 16-10-80 but Shri U.C. Pant, Dy. Manager (Personnel) of the respondent informed him,—vide his letter, dated 15th October, 1980 that leave applied for was not sanctioned as the same was not recommended by the Chief Medical Officer and the workman was asked to produce a certificate from the said Doctor and that on 21st October, 1980 the workman

went to the factory to report for duty alongwith certificate issued by Dr. S.B. Tyagi recommending him sick leave for 15-10-80 to 20-10-80 but he was not allowed to join his duties unless he produced a certificate from the Chief Medical Officer, Sonapat, and the services of the workman were terminated on 22nd October, 1980 on the ground that the workman has lost his lien to his job under clause 15 of the Certified Standing Orders applicable to the company. It is further alleged that on 25th October, 1980, the workman again reported for duty alongwith fitness certificate from the Chief Medical Officer, Sonapat but he was not allowed to resume his duty and so it is alleged that the termination of service is illegal and wrong and in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, preliminary objections taken are that the management never discharged, dismissed, retrenched or otherwise terminated the services of the workman, who was continuously absent from duty without leave and permission w.e.f. 9th October, 1980 and inspite of the intimation sent to him by the management to resume his duty, the workman failed to do so and so the management was justified in presuming that the workman has left the employment of the respondent of his own as per Certified Standing Orders, applicable to the company. Then there is a prayer to decide this preliminary objection which goes to the root of the controversy between the parties. On merits, it is admitted that the workman was an employee of the respondent but it is denied that he applied for leave on 8th October, 1980 and the medical certificate, dated 10th October, 1980 from Dr. S.B. Tyagi, R.M.P. without any leave application was received by the management on 13th October, 1980 recommending his leave from 8th October, 1980 to 14th October, 1980. The management immediately sent a telegram to the workman directing him to get himself medically examined from the Chief Medical Officer, Sonapat otherwise to resume his duty. The said telegram was followed by letter of the same date but the workman failed to resume his duties, or to produce medical certificate from the Chief Medical Officer, Sonapat. It is further averred that the workman was directed to produce himself before the Chief Medical Officer, Sonapat, for medical examination at the expense of the respondent/company. Since the workman failed to report for duty without leave or permission for 10 continuous days from 9th October, 1980 to 21st October, 1980, under clause 15 of the Certified Standing Orders, he lost lien to his employment and as such there was no question of the respondent terminating the services of the workman. On these grounds, it is alleged that there was no infraction of section 25-F of the Industrial Disputes Act, 1947.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the management.

5. On the pleadings of the parties, the following issues were settled for decision on 30th November, 1981:—

- (1) Whether the workman abandoned his service by continuously remaining absent from duty from 9th October, 1980? If so, to what effect?
- (2) Whether the termination of services of Shri Nafe Singh was justified and in order? If not, to what relief is he entitled?

6. Both the parties were allowed to produce their evidence. I have heard the learned Authorised Representative for the workman Shri M.S. Rathi and Shri C.M. Lal, representative of the respondent.

7. The learned Authorised Representative for the respondent/management contended that the reference is bad in law as the real dispute between the parties has not been referred to this Court for adjudication. According to him, since there was no termination of services of the workman and the terms of reference are limited to the justification or otherwise of the termination, so the controversy between the parties as emerges after evidence and from the pleadings of the parties is entirely different to the one contained in the order of reference. In this context the learned representative of the management contended that since the workman absented from his duties from 9th October, 1980 to 21st October, 1980 on the flimsy ground of illness, he automatically lost lien to his job under clause 15 of the Certified Standing Orders, which admittedly are applicable to the respondent/company. This he contended, on the basis of law laid down in 1984 LLN 297 Sitaram Vishnu Thirodkar and Administrator, Government of Goa and others. In this authority their Lordships of the Bombay High Court referred to a full bench judgement of Delhi High Court in India Tourism Development Corporation, New Delhi Vs. Delhi Administration Delhi and others. Their Lordships further copiously extracted observations from the said judgement which can be quoted here with advantage:—

"It is settled law that the jurisdiction of the Labour/Industrial Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and the matters incidental thereto and it is not premissible to go beyond the terms of the reference. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters. Making of an order of references is undoubtedly an administrative function, but even that is amenable to judicial review in the proceedings under Article 226 under certain facts and circumstances. An order of reference is open to judicial review if it is shown that the appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. We are of the view that the existence of lockout itself being the real dispute between the management and its workmen, the term of reference proceeds on the assumption

that there was lockout with effect from January, 1981. There is a very thin line of distinction between closure and a lockout. The real dispute between the parties was whether there was at all a lockout or whether there was violence by the workmen and for that reason there was suspension of the working of the restaurant with effect from 2nd January, 1981, and whether the closure of the restaurant from 18th February, 1981, was proper and for that reason the termination of the services of the workmen was justified and legal. The appropriate Government has failed to take into consideration the entire set of circumstances brought out by the management in the two notices displayed and the replies furnished to the Delhi Administration to come to the conclusion whether it was a lockout or closure. Whether in fact there was a closure or lockout is the real dispute which can more appropriately be determined in industrial adjudication. The Industrial Tribunal cannot go into that question as the real dispute has not been made the subject-matter of the order of reference."

8. Though there is no prohibition for the Labour Court to travel beyond the terms of reference for matters incidental thereto and ancillary for the decision of the reference but the Labour Court cannot travel beyond the reference and decide the question as to whether the workman has abandoned his service and as to whether the workman lost lien to his employment by remaining absent from duty without leave or permission from 9th October, 1980 to 21st October, 1980.

9. There is no gainsaying the fact that reference in the present case is limited to the facts as to whether the termination of services of the workman was justified and in order and if not, to what relief is the workman entitled. So the learned Authorised representative of the respondent contended that this Court will be straying away from the terms of the reference, in case, it starts adjudicating upon the fact as to whether the workman has lost lien to his employment by virtue of his wilful absence without leave or permission from his duty for the period 9th October, 1980 to 21st October, 1980 as provided in clause 15 of the Certified Standing Orders. If the ratio of the Bombay High Court Authority under reference is applied, the contention of Shri C.M. Lal, learned Authorised Representative of the respondent is absolutely sound but to apply this authority, this Court has to touch upon the evidence on record to hold that the controversy in the present case is not confined to the termination of services of the workman but also as to whether the workman has lost his lien to his employment by virtue of his absence without leave or permission from 9th October, 1980 to 21st October, 1980. Both the parties have adduced evidence on this fact. The workman has relied upon two medical certificates, photo copies of which have been placed on the file, which are dated 10th October, 1980 and 15th October, 1980. The same have been placed on record by the respondent/company. In the medical certificate, dated 10th October, 1980 Dr. S.B. Tyagi has recommended sick leave to Shri Nafe Singh, workman for 8th October, 1980 to 14th October, 1980 and the 2nd medical certificate dated 15th October, 1980, he has recommended leave from 15th October, 1980 to 16th October, 1980. Even if the contention of the workman is believed, there is no medical certificate beyond 16th October, 1980. Furthermore the workman has even denied his signatures upon the medical certificates referred to above. He has further denied his signatures even on the statement of claim. In this context the learned Authorised Representative for the management has drawn my attention to rule 10-B of the Industrial Disputes (Central clause Rules 1957). The said rule enjoins upon the workman to file a Statement of Claim himself with the Labour Court after the dispute is referred for adjudication. Since the workman has denied the signatures upon the statement of claim, so in a way there is no dispute for adjudication before this Court, otherwise, the workman had no reason to deny his signature upon the statement of claim. The learned Authorised Representative of the workman cited a catena of authorities reported in 1970 LLJ Vol-I page 26 Workmen in Buckingham and Carnatic Mills, Madras and Buckingham and Carnatic Mills, Madras, AIR 1978 S.C. 8 Delhi Cloth and General Mills Company Limited Vs. Shambhu Nath Mukherji and others, AIR 1982 S.C. page 854 L. Robert D'Souza, Vs. The Executive Engineer, Southern Railway and another and AIR 1973 Patna 431 Sobhana Das Gupta Vs. The State of Bihar and another. These authorities were cited by Shri M.S. Rathie learned Authorised Representative of the workmen to prop up his contention that the order of the management copy of which is Ex. MW-1/7 though on the face of it, is innocuous in nature but the same is an order of termination and as such the workman is entitled to the protection of section 25-F of the Industrial Disputes Act, 1947. Be that it may be so, the controversy in the present case substantially spills beyond the terms of the reference and as such this Court cannot decide the same in view of the law laid down in the Bombay High Court Authority referred to above. So, in my opinion the reference is bad in law. The same seems to have been made by the Government of Haryana in a mechanical and perfunctory manner without applying its mind as to the real dispute between the parties. Since the reference is being held to be bad in law, I need not decide the issue framed. The reference is answered and returned accordingly. There is no order as to costs.

Dated the 7th September, 1984

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 60/81/3243, dated the 1st October, 1984

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chanrigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.